

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|---------------------------|--|---|---------------------------------|
| Investigator: Chris Olmsted | Team: Squad #9 | CCRB Case #: 202004551 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 06/06/2020 8:00 PM | Location of Incident: East 165th Street and 3rd Avenue | Precinct: 42 | 18 Mo. SOL 12/6/2021 | EO SOL 5/4/2022 | |
| Date/Time CV Reported Sat, 06/06/2020 9:50 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 06/24/2020 11:17 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------------|--------|--------|---------|
| 1. An officer | | | |
| 2. POM Jose Garcia | 06683 | 961780 | 042 PCT |
| 3. POM Christophe Radzinski | 17537 | 959105 | 042 PCT |
| 4. POM Jarrett Dill | 17550 | 940094 | 042 PCT |
| 5. LT Brian Query | 00000 | 937315 | 042 PCT |
| 6. PO Anthony Alvino | 04731 | 961613 | INT CIS |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------------|-----------|--------|----------|
| 1. POM Hilme Kassim | 9792 | 967564 | 042 PCT |
| 2. POM Sheikh Aktaruzzaman | 26939 | 966929 | 042 PCT |
| 3. PO Enmanuel Rodriguezmarte | 04091 | 952173 | 042 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A. An officer | Force: An officer struck § 87(2)(b) with a baton. | |
| B.LT Brian Query | Force: Lieutenant Brian Query used physical force against § 87(2)(b) | |
| C.POM Jose Garcia | Force: Police Officer Jose Garcia struck § 87(2)(b) with an asp. | |
| D.POM Jarrett Dill | Discourtesy: Police Officer Jarrett Dill spoke discourteously to an individual. | |
| E.POM Jarrett Dill | Off. Language: Police Officer Jarrett Dill made offensive remarks to an individual. | |
| F.POM Jarrett Dill | Abuse: Police Officer Jarrett Dill made sexually suggestive remarks to an individual. | |
| G.POM Jarrett Dill | Discourtesy: Police Officer Jarrett Dill spoke discourteously to an individual. | |
| H.POM Jarrett Dill | Discourtesy: Police Officer Jarrett Dill spoke discourteously to an individual. | |
| § 87(2)(g), § 87(4-b) | | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|------------|-----------------------------|
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |

Case Summary

On June 6, 2020, § 87(2)(b) filed this complaint with IAB. IAB assigned the complaint § 87(2)(b) and referred it to the CCRB on June 24, 2020, under log § 87(2)(b). In their initial investigative steps, IAB identified § 87(2)(b) as an additional victim.

On June 6, 2020, between 8:00 p.m. and 9:00 p.m., officers responded to an outdoor gathering on East 165th Street between Washington Avenue and 3rd Avenue in the Bronx to enforce the curfew in place due to the COVID-19 pandemic. During their response, an officer allegedly struck § 87(2)(b) in the leg with a baton (**Allegation A: Force, § 87(2)(g)**). Lieutenant Brian Query of the 42nd Precinct ordered officers to use physical force against § 87(2)(b) (**Allegation B: Force, § 87(2)(g)**). PO Jose Garcia of the 42nd Precinct struck § 87(2)(b) 14 times with an asp (**Allegation C: Force, § 87(2)(g)**). PO Jarrett Dill of the 42nd Precinct made discourteous, offensive, and sexual remarks to an unidentified individual (**Allegation D: Discourtesy, § 87(2)(g)**). (**Allegation E: Offensive Language, § 87(2)(g)**) (**Allegation F: Abuse of Authority, § 87(2)(g)**). and PO Dill made discourteous and profane remarks to a second unidentified individual (**Allegations G and H: Discourtesy, § 87(2)(g)**).

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) was arrested during this incident for resisting arrest, obstructing governmental administration in the second degree, violating executive law, disorderly conduct, and unlawful possession of marijuana. (Board Review 01)

On October 20, 2020, NYPD Legal provided 46 BWC videos from 36 officers related to this incident. Among them were videos recorded by PO Garcia (Board Review 02), PO Dill (Board Review 03), PO Alvino (Board Review 04), and PO Mohammad Mondol of the 42nd Precinct (Board Review 05).

Findings and Recommendations

Allegation (A) Force: An officer struck § 87(2)(b) with a baton.

On June 6, 2020, § 87(2)(b) alleged over the phone to the Internal Affairs Bureau that an officer struck him with a baton during this incident. When IAB referred the case to the CCRB they provided the phone number § 87(2)(b) used when he filed the complaint, and the investigation confirmed the number against the relevant ICAD. Between July 1 and August 24, 2020, the CCRB attempted to reach § 87(2)(b) at that number five times. On the first attempt the CCRB left a please call message, and on each of the subsequent attempts the line was not in service.

On July 8, 2020, the CCRB conducted a LexisNexis search for additional contact information for § 87(2)(b) which yielded one additional potential phone number for him. Between July 8 and September 28, 2020, the CCRB attempted to reach § 87(2)(b) at this number three times. On each attempt the line was not in service.

§ 87(2)(b)

On October 8, 2020, the CCRB interviewed § 87(2)(b) who stated he had no knowledge of a § 87(2)(b) (Board Review 06)

§ 87(2)(g)

Allegation (B) Force: Lieutenant Brian Query used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Jose Garcia struck § 87(2)(b) with a baton.

On June 6, 2020, at approximately 8:25 p.m., at least 37 officers responded to East 165th Street between Washington Avenue and 3rd Avenue in the Bronx to disperse an outdoor gathering of several dozen civilians, including § 87(2)(b) occurring in violation of the citywide curfew from 8:00 p.m. to 5:00 a.m. ordered by Mayor de Blasio on June 5, 2020 in Emergency Executive Order No. 121 (Board Review 07).

In PO Alvino's BWC recording from the incident between 1:47 and 2:22, § 87(2)(b) a Black male wearing blue pants and a black shirt, refuses to comply with officers' orders to disperse. § 87(2)(b) yells at officers, uses profanity towards them, and disputes the curfew. Between 7:15 and 7:47, § 87(2)(b) stands in the entryway to a building surrounded by other civilians while he yells at officers and continues to dispute the curfew. He calls to other civilians in what appear to be attempts to incite other civilians against the officers. At 7:47, Lieutenant Query waves an arm between officers and § 87(2)(b) signaling officers to begin the arrest. At least six officers begin attempting to take § 87(2)(b) into custody. PO Alvino appears to be the first officer to reach § 87(2)(b). He gestures for § 87(2)(b) to turn around and an unidentified civilian appears to attempt to get between PO Alvino and § 87(2)(b). PO Alvino attempts to grab § 87(2)(b)'s wrist and a struggle ensues. Officers take § 87(2)(b) to the ground. § 87(2)(b)'s torso ends up on top of a speaker lying on the ground. Beginning at 7:59, § 87(2)(b) says, "I'm calm. I'm calm!" An officer states, "stop resisting." § 87(2)(b) states, "ah my ribs! Hold on, hold on, hold on. Alright, alright, I got it, I'm going.." § 87(2)(b) repeats, "I'm going" for fifteen seconds. Officers handcuff § 87(2)(b) and lead him away. (Board Review 04)

In PO Garcia's BWC recording of the incident beginning at 5:26, PO Garcia moves towards the officers attempting to arrest § 87(2)(b). At least twelve officers are already interacting with § 87(2)(b) or between PO Garcia and the ongoing arrest. PO Garcia goes to where officers have surrounded § 87(2)(b)'s head. PO Garcia tries to interact with § 87(2)(b) but he is blocked by the bodies of officers already working to take § 87(2)(b) into custody. § 87(2)(b) states, "I'm calm. I'm calm" and continues with the statements captured by PO Alvino's camera. At 5:40 PO Garcia grabs § 87(2)(b)'s right arm and holds it away from § 87(2)(b)'s body as another officer attempts to pull the arm behind § 87(2)(b)'s back. At 5:59, PO Garcia moves § 87(2)(b)'s arm to § 87(2)(b)'s back, where officers are already holding § 87(2)(b)'s other arm. PO Garcia lets go of the arm and officers close in around § 87(2)(b) blocking PO Garcia's view of § 87(2)(b)'s torso. § 87(2)(b) is repeating, "I'm going" and approximately five officers, excluding PO Garcia, are placing § 87(2)(b) in handcuffs. Beginning at 6:07, PO Garcia positions himself over § 87(2)(b)'s legs, takes out his unextended asp, and begins striking § 87(2)(b)'s left upper leg with the baton. He strikes § 87(2)(b) six times. After six strikes, the baton extends. PO Garcia strikes § 87(2)(b)'s left upper leg eight more times with his extended asp. (Board Review 02)

PO Garcia stated that when he involved himself in § 87(2)(b)'s arrest, approximately five other officers were already there. He stated he struck § 87(2)(b) more than once with his asp to "gain pain compliance" because § 87(2)(b) would not surrender his hands to officers to be handcuffed. PO Garcia stated § 87(2)(b) made statements of compliance during his arrest, but that § 87(2)(b) flailed and tensed his arms in active resistance to being handcuffed. (Board Review 08)

On June 6, 2020, **Patrol Guide Procedure 221-01** stated, "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody." It further states, "In determining whether the use of force is reasonable, members of service should consider the following:

- a. The nature and severity of crime/circumstances,
- b. Actions taken by subject,
- c. Duration of action,

- d. Immediacy of perceived threat or harm to subject, members of the service, and/or bystanders,
- e. Whether the subject is actively resisting custody,
- f. Whether the subject is attempting to evade arrest by flight,
- g. Number of subjects in comparison to number of MOS,
- h. Size, age, and condition of subject in comparison to MOS,
- i. Subject's violent history, if known,
- j. Presence of hostile crowd or agitators, and/or
- k. Subject apparently under influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.” (BR 09)

On June 6, 2020, **Patrol Guide Procedure 221-02** stated members of service must “assess the situation continually and adjust the use of force as necessary.” (BR 10)

Lieutenant Query was the ranking officer on scene and ordered officers to arrest § 87(2)(b). Video evidence shows that prior to his arrest § 87(2)(b) was combative with officers and yelled at other civilians in apparent attempts to incite them against officers. When an officer attempted to order § 87(2)(b) to turn around, another civilian appeared to attempt to interfere with § 87(2)(b)'s arrest. When an officer grabbed § 87(2)(b)'s wrist, a physical altercation ensued. Patrol Guide Procedure 221 states officers may use force to take individuals into custody. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

When PO Garcia attempted to join § 87(2)(b)'s arrest, so many officers were already involved that PO Garcia initially could not reach § 87(2)(b). When he did get involved, he held § 87(2)(b)'s arm in such a way as to prevent officers from getting § 87(2)(b)'s hands behind his back. Once PO Garcia passed § 87(2)(b)'s arm to the numerous other officers surrounding § 87(2)(b), officers had both of § 87(2)(b)'s arms behind § 87(2)(b)'s back and § 87(2)(b) was repeatedly stating his surrender. PO Garcia stated he could hear § 87(2)(b)'s statements during the incident. An officer then obstructed PO Garcia's view of § 87(2)(b)'s arms. Despite these facts, PO Garcia drew his asp and struck § 87(2)(b) fourteen times, allegedly for the purpose of forcing § 87(2)(b) to provide his hands to officers.

Patrol Guide Procedure 221-02 requires officers to “assess the situation continually and adjust the use of force necessary.” By the time PO Garcia used his asp against § 87(2)(b) five officers had overpowered § 87(2)(b) officers had both of § 87(2)(b)'s arms under control, and no officer had used more than hand strikes to subdue § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (D) Discourtesy: Police Officer Jarrett Dill spoke discourteously to an individual.

Allegation (E) Offensive Language: Police Officer Jarrett Dill made offensive remarks to an individual.

Allegation (F) Abuse of Authority: Police Officer Jarrett Dill made sexually suggestive remarks to an individual.

Allegation (G) Discourtesy: Police Officer Jarrett Dill spoke discourteously to an individual.

Allegation (H) Discourtesy: Police Officer Jarrett Dill spoke discourteously to an individual.

PO Dill responded to the incident location after a call for additional units went over the radio. Upon his arrival, PO Dill focused on dispersing civilians on the street.

Beginning at 1:40 in PO Dill's BWC recording of the incident, PO Dill and an unidentified female civilian in a red hat (CV1) have the following dialogue:

PO Dill: I don't care where you go but you gotta get up outta here right now.
 CV1: Shut up.
 PO Dill: You shut up. Poor little dusty ass. Get outta here.
 CV1: You dusty. I'll fuck your daughter, nigga.
 PO Dill: Yo.
 CV1: I'll fuck your daughter.
 PO Dill: It's fine. It's cool.
 CV1: (unintelligible)
 PO Dill: It's fine. I'm probably fucking your mother. So you're probably my daughter! (unintelligible) – my daughter. She's probably my daughter.

PO Dill laughs and repeats parts of the interaction to himself. CV1 and an unidentified, heavy-set female civilian in a black shirt (CV2) yell unintelligible responses at PO Dill as they walk up the street.

Less than a minute later, CV1 and CV2 move to the other side of the street and PO Dill approaches them. PO Dill orders CV2 to go to the other side of the street and follows her as she complies. At approximately 3:02 a voice states, "don't touch her." PO Dill does not appear to have touched CV2. PO Dill and CV2 have the following dialogue:

PO Dill: No one touching her! No one touching her. 'Course I didn't touch her, can't pick her up anyway. [PO Mondol laughs from next to PO Dill]
 CV2: You CAN pick me up!
 PO Dill: I know I can!
 CV2: You CAN!
 PO Dill: I can! I'm telling you I can. Thank you! Shit.

Several civilians make overlapping comments. The words "make jokes" and "big woman" are heard. The group walks up the sidewalk and PO Dill and PO Mondol walk back toward other officers. PO Dill deactivates his camera at 8:34:50 p.m. (Board Review 03)

PO Mondol's BWC captures the above interaction beginning at 3:00. When he and PO Dill stop interacting with civilians and PO Dill deactivates his BWC, PO Mondol keeps recording. At 4:28, PO Dill calls after the group of departing civilians, "Read a book to your kids!" before laughing and adding under his breath, "motherfuckers." He goes on to say, "I said, 'Can't pick your ass up,' keep moving! That's all you had to do!" (Board Review 05)

PO Dill stated that during the incident a civilian made "vulgar" and "aggressive" comments to him, including physical threats, but he could not recall what the comments or threats were. He stated he cursed back at the civilian "just to deliver back towards them the amount of aggression coming towards me." He initially did not recall making any of the specific statements shown in BWC.

After watching his relevant BWC recording of the incident, PO Dill stated that CV1 had told him she was "fucking" his daughter, so "I just gave her back the comments she threw at me." He stated that when he used the word "dusty" he understood it to mean, "like debris. Laying on the street, being on the street." PO Dill stated that when he said he could not pick CV2 up he was informing her that he was not permitted to make physical contact with her. He stated the comments were not about her weight, and further stated that what he heard in the video was him repeating, "I can't pick you up." (Board Review 11)

On June 6, 2020, the following Patrol Guide Procedures were in effect:

Patrol Guide Procedure 200-02 stated officers must "maintain a higher standard of integrity than is generally expected of others" and must "respect the dignity of each individual and render [their] services with courtesy and civility." (Board Review 12)

Patrol Guide Procedure 203-09 stated officers are expected to “interact with members of the public in a professional manner.” (Board Review 13)

Patrol Guide Procedure 202-09.69 stated “sexually degrading statements or jokes” were “offensive,” “unwelcome,” and “subject to disciplinary action.” (Board Review 14)

An officer describing a civilian as debris laying on the street is discourteous. An officer telling a civilian he is “fucking [her] mother” is offensive and sexually inappropriate. PO Dill stated he made these statements because he was replying to rude statements a civilian made towards him.

§ 87(2)(g)

In a separate interaction, PO Dill told a group of civilians in front of and about a heavy-set woman that he “couldn’t pick her up,” eliciting a laugh from a fellow officer. PO Dill engaged in banter with the civilians, which he punctuated by saying, “shit.” Civilian comments on BWC make clear the civilians understood PO Dill’s comments to be about the woman’s weight. PO Dill claimed to the CCRB that he was not making a discourteous statement about the civilian’s weight, but another officer’s BWC shows that after PO Dill deactivated his own camera he joked about the interaction with other officers and made a further disparaging comment about the group of civilians.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 15)
- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 16)
- Lieutenant Query has been a member of service for 17 years and has been a subject in eight other CCRB complaints and 20 other allegations, of which one was substantiated.:
 - 201706222 involved substantiated allegations of Refusal to Provide Medical Treatment against Lieutenant Query. The Board recommended Command Discipline B and the NYPD imposed no penalty.
 - § 87(2)(g)
- PO Garcia has been a member of service for 5 years and has been a subject in four other CCRB complaints and eight other allegations, of which none was substantiated.
 - 3 Force allegations have been pleaded against PO Garcia. In 201910052 the allegation was closed Complainant Uncooperative. 202003361 was mediated.
- PO Dill has been a member of service for 16 years and has been named as a subject in six other CCRB complaint and 11 other allegations, of which one was Substantiated
 - 200913776 involved a substantiated allegation of a Search of Person against PO Dill. The Board recommended Charges and the NYPD imposed Instructions.
 - § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of February 10, 2022, the Office of the Comptroller is processing a Notice of Claim check for notices filed regarding this incident. The results will be added to the case file upon receipt. (Board Review 17)

• § 87(2)(b)

Squad No.: 09

Investigator: Christopher Olmsted
Signature

Investigator Chris Olmsted
Print Title & Name

02/10/2022
Date

Squad Leader: Monique West
Signature

IM Monique West
Print Title & Name

02/16/2022
Date

Reviewer:

Signature

Print Title & Name

Date